TIONS, 7 ed., 517–518; BRANNON, FOURTEENTH AMENDMENT, 110 *et seq.* Nor should it be held against public policy to enforce a contract which substitutes for the ordinary tort liability an obligation to contribute to an insurance fund. The most serious objection to an agreement of this sort is the danger that the employer may relax his efforts to provide safeguards, because his negligence will not now have so direct and immediate an effect on his purse. Contracts for exemptions from all liability for negligence to the employee have long been regarded as against public policy by the great weight of authority, although the employer generally specifies that the employee is compensated by an increased wage. *Johnston* v. *Fargo*, 184 N. Y. 379, 77 N. E. 388; *Roesner* v. *Hermann*, 8 Fed. 782. *Contra, Griffiths* v. *The Earl of Dudley*, 9 Q. B. 357. So in the law of common carriers a contract against all liability for negligence is almost universally refused recognition. *Bank of Kentucky* v. *Adams Express Co.*, 93 U. S. 174; *Illinois Central R. Co.* v. *Beebe*, 174 Ill. 13, 50 N. E. 1019. *Contra, Cragin* v. *New York Central R. Co.*, 51 N. Y. 61. But a contract with a carrier limiting liability to what is still a substantial amount is very generally allowed. *Hart* v. *Pennsylvania R. Co.*, 112 U. S. 331, 5 Sup. Ct. 151; *Graves* v. *Lake Shore & Michigan Southern R. Co.*, 137 Mass. 33. *Contra, Overland Mail & Express Co.* v. *Carroll*, 7 Colo. 43, 1 Pac. 682. To be sure, in the law of carriers it is a question of safeguarding the right of the public to efficient public service, whereas in the law of master and servant the state is protecting itself from the burden of injured workmen. But it is submitted that the essential point of protecting the public interest is equally attained in either class of cases by a substantial liability. In the long run the annual assessments for the insurance fund required by the contract in the principal case must be influenced by the number of accidents, and this will prove a substantial incentive to due care.

NUISANCE — WHAT CONSTITUTES A NUISANCE — EXTINGUISHMENT OF CAUSE OF ACTION BY PAROL LICENSE. — A landowner sued the defendant for maintaining a nuisance by establishing a pumping station on adjoining land. In consideration of the payment of a judgment entered by consent the landowner released all claims which she, "her executors, administrators, heirs, grantees, or assigns" should acquire on account of the alleged nuisance. The landowner conveyed to the plaintiff, who brought suit for damages caused by the pumping station. *Held*, that the plaintiff cannot recover. *Panama Realty Co.* v. *City of New York*, 48 N. Y. L. J. 1690.

The decision rests on the theory that the right to enjoy one's own land undisturbed by the various uses of neighboring land which the law has classed as private nuisances, is a natural right in the nature of an easement or servitude imposed by law upon the neighboring land. If a landowner gives a parol license to do acts on the licensee's land inconsistent with a servitude of the licensor's, the license becomes irrevocable when the licensee has acted in reliance thereon, and extinguishes the servitude. *Morse* v. *Copeland*, 2 Gray (Mass.) 302; *Winter* v. *Brockwell*, 8 East 308. In the principal case the consensual judgment followed by the continuance of the pumping station was assumed to have this effect. But, it is submitted, the right to maintain a nuisance which restricts the ordinary enjoyment of the injured land and permits an extraordinary use of the injuring property, resembles the creation rather than the extinguishment of a servitude. *Cf. Churchill* v. *Russel*, 148 Cal. 1, 82 Pac. 440; *City of Kewanee* v. *Otley*, 204 Ill. 402, 413, 68 N. E. 388, 392. See *Veghte* v. *Raritan Water Power Co.*, 19 N. J. Eq. 142, 153, 154. A legal servitude must be created by grant or prescription. *Fentiman* v. *Smith*, 4 East 107; *Morse* v. *Copeland, supra.* The agreement in the principal case might create some equitable servitude. *Cf. Rerick* v. *Kern*, 14 Serg. & R. (Pa.) 267; *McBroom* v.

Thompson, 25 Or. 559, 37 Pac. 57. But it should not be valid against an innocent purchaser. *Taggart* v. *Warner*, 83 Wis. 1, 53 N. W. 33; *Taylor* v. *Millard*, 118 N. Y. 244, 23 N. E. 376.

RESTRAINT OF TRADE — SHERMAN ANTI-TRUST LAW — CORNERING THE MARKET. — The defendants were indicted for conspiring to corner the cotton market by the making of contracts for the purchase for future delivery of cotton greatly in excess of the available supply for the year, coupled with a temporary withholding from sale, with the purpose of securing control of the supply and enhancing the price. *Held*, that the indictment charges an offense under the Sherman Anti-Trust Law. *United States* v. *Patten*, 226 U. S. 525, 33 Sup. Ct. 141.

The acquisition of a dominant portion of the cotton supply available for the year, by a combination resulting in an elimination to a large degree of any possible competition in meeting the demand for that supply, presents a situation dangerous to the public interest, particularly when such demand is artificially stimulated; and accordingly it constitutes an undue restraint within the rule laid down by the Supreme Court. See 26 HARV. L. REV. 379.

SPECIFIC PERFORMANCE — DEFENSES — RIGHT OF JOINT VENDEE TO CONVEYANCE TO HIMSELF ALONE. — The defendant promised under seal to convey land to the plaintiff and the co-defendant if the purchase price was paid before a certain time. The co-defendant refused to go on, and procured from the defendant another option to purchase the same property. The plaintiff tendered the purchase price within the specified time and brought suit for specific performance, asking a conveyance to himself alone. *Held*, that the decree should be granted. *Shaeffer* v. *Herman*, 85 Atl. 94 (Pa.).

The court considered that the tender of the purchase price completed the contract. Ordinarily joint obligees on a contract must join in a suit for specific performance. *Davis* v. *Pfeiffer*, 213 Ill. 249, 72 N. E. 718. But where one wrongfully refuses to join as plaintiff he may be joined as defendant. *Cook* v. *Haaly*, 1 Cooke (Tenn.) 465. Ordinarily, however, the conveyance decreed should be the one promised. *Davis* v. *Pfeiffer*, *supra*; *Sproule* v. *Winant's Heirs*, 23 Ky. 195. When two jointly contract to buy land, each thereby becomes equitable owner of a one-half interest, and by paying more than a proportionate share of the purchase price one of the joint purchasers does not thereby become the owner in proportion to the overpayment. See *Freeman* v. *McMillian*, 2 Lea (Tenn.) 121, 123. And it has been held that one who pays the entire price has no equitable claim on the other's share. *Crane* v. *Caldwell*, 14 Ill. 468. See *Glasscock* v. *Glasscock*, 17 Tex. 480, 486. Another view, however, recognizes an equitable lien. *Tompkins* v. *Mitchell*, 2 Rand (Va.) 428. It has been suggested that even where, as in the principal case, the conveyance has not yet been made, the entire equitable interest should rest in one who has paid the money, subject to a right of redemption by the joint obligee. *Deitzler* v. *Mishler*, 37 Pa. 82. On this view, since the co-defendant disclaimed all rights under the contract and refused to pay his share of the purchase price, it would seem proper for the court to convey the entire property to the plaintiff, thereby strictly foreclosing the co-defendant of his interest.

SURETYSHIP — SURETY'S DEFENSES: VARIATION OF RISK — SURETY'S LIABILITY ON APPEAL BOND WHERE JUDGMENT AFFIRMED BY CONSENT. — Upon appeal from a judgment, a bond was given conditioned upon the appellant's payment of all judgments which might be rendered against him. The judgment appealed from was affirmed by consent of the parties. *Held*, that the surety is not released from the bond. *First State Bank of Mountain Lake* v. *C. E. Stevens Land Co.*, 137 N. W. 1101 (Minn.).